

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 449 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF VAJUBHAI DURLANDAS ASHRANI

Versus

RUDABHAI KARSANBHAI

Appearance:

MR YN OZA for Petitioners

MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/03/2000

ORAL JUDGEMENT

#.This Revision Application has been filed by the original defendant of Rent Suit No.313 of 1979 and Regular Civil Suit No. 47 of 1977. The opponent herein is the original plaintiff of the said suit.

#. It is the case of the plaintiff that he is the owner of a property situated in Kabu Kumbhar street near Panjra pole in the City of Rajkot. Said premises was given to the defendant at a monthly rent of Rs. 70/-. As per the conditions of the lease the defendant himself was to use the suit premises and that in contravention of the said terms, he sub let the suit premises or assigned his interest in the suit premises in favour of other persons and that the defendant is making profit out of the same. The plaintiff therefore, gave a notice on 20.9.76 to the defendant but the defendant did not comply with the same. Therefore, the aforesaid suit was filed for getting the decree for possession on the aforesaid grounds.

#. The defendant appeared in the suit and filed written statement at exh.20. The defendant resisted the suit on various grounds.

#. The Trial Court framed various issues at exh.21 and after recording the evidence and hearing the arguments of both the sides came to the conclusion that the defendant has sub let the suit premises. The Trial Court fixed the standard rent at Rs.70/- and therefore, ultimately a decree for possession was passed by the Trial Court on the ground of sub letting.

#. Aforesaid decree of the Trial Court was challenged by the original defendant by filing Civil Appeal No. 306 of 1980 by the original defendant. Aforesaid appeal was heard by the learned Jt. District Judge, Rajkot and the learned Appellate Judge by his judgment and order dated 20.2.1983 dismissed the appeal. The petitioner has challenged the order of the Appellate Court by filing the present Revision Application.

#. It is the case of the plaintiff that the defendant has sub let the suit premises to one Bhomeshwar Printery, Sanjay Textiles, Piyush Textile etc. and that in the suit premises various persons are doing their business. According to the plaintiff defendant was charging premium from the aforesaid persons and by taking the money he was allowing these persons to do the business. It is the case of the defendant that he has a Saree Printing business and that he is also having business at Ahmedabad and therefore, he used to visit Rajkot from Ahmedabad for supervising the business at Rajkot and that the business at Rajkot is carried out through his employees. The learned Appellate Judge has considered the documentary evidence on record including the entries from municipal records. Exh. 61 is the extract from the municipal

record of the house tax assessment for the year 1964 to 1968 wherein one Khatri Haribhai is shown to be the occupant. Document at exh.,62 is the entry for the period between 1968 to 1972 wherein the name of Bhomeshwar Printery is shown and the rent is mentioned at Rs. 70/- per month. In the year 1972 to 1972 the name of Dilip Textile is shown as sub-tenant and for the year 1976 to 1980 the possession of one Naran Textile is shown as sub-tenant. Exh.65 is the certificate issued under the Shops and Establishments Act in favour of Sanjay Printery. The plaintiff by leading oral as well as documentary evidence proved that the premises was transferred by the defendant to various persons from time to time. The plaintiff has also relied upon the evidence of Popatlal who has stated about his business in the name of Bhomeshwar Printery in the suit premises in the year 1967 to 1968. After two years he vacated the suit premises. Looking to the evidence on record it has been found by the Appellate Court that exclusive possession of the suit premises was handed over by the defendant from time to time to various sub-tenants. On appreciation of evidence both the courts below came to the conclusion that the premises in question was sub let by the original tenant. It is not possible for this court to reappraise the evidence while deciding the revision application. The only inference which can be drawn from the documentary evidence is that the defendant had parted with the possession of the suit property. The Appellate Judge has in detail considered the evidence on record and it is not possible to believe that the Appellate Court is in error of law in coming to the conclusion that the defendant has sub let the premises or assigned his interest in the suit premises in favour of third parties. In that view of the matter I do not find any substance in this revision application. The Revision Application is accordingly dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

#. At this stage Mr. Oza learned advocate for the petitioner has requested that he may be given sometime to find out alternative place for the purpose of his business. In view of the facts and circumstances I direct that the decree for possession may not be executed till 31.12.2000 on condition that the petitioner shall file a usual undertaking before this court within 8 weeks from today. In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit property to any one and without obstructing in any manner he will hand over the vacant and peaceful

possession to the respondent on or before 31.12.2000.
The petitioner shall continue to pay mesne profit
regularly during the aforesaid period. If the petitioner
fails to file the undertaking within 8 weeks from today
or if the petitioner commits any breach of the said
undertaking it will be open for the landlord to execute
the decree for possession forthwith.

(P.B.Majmudar.B)

govindan

#.